



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 26, 2022

IN THE MATTER OF:

Appeal Board No. 624120

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective May 9, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed May 27, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

FINDINGS OF FACT: The claimant worked for a grocery store as a part-time meat wrapping clerk for seven months until May 13, 2021. She was a union member. The claimant was aware of the employer's cell phone usage policy, which prohibits use of cell phones while on duty. Such use is permitted only during breaktime. At the time of hire, the claimant was also made aware that she could contact the Human Resources Department or the ethics hotline, which is answered by the employer's corporate office in Buffalo, New York, if she had any concerns about workplace issues.

During the course of the claimant's employment, a coworker requested, and received, a transfer to a different department after complaining about the

meat department supervisor. On the claimant's last day of work, the claimant used her cell phone to talk to her sister, who was upset about their father's recent death. The claimant was on duty at the time and was observed by the meat department supervisor. The supervisor directed the claimant to put the phone away and get back to work. The supervisor was frustrated with the claimant because the claimant's cell phone use while on duty was an ongoing problem; as a result of her frustration, she may have directed a curse word at the claimant's cell phone when issuing this directive. The store manager had asked the supervisor to decrease the amount of cursing she did in the workplace on two prior occasions.

The claimant decided to quit because she considered the manner in which the supervisor directed her to put her phone away and go back to work to be harassment. The claimant did not first complain about this to higher management, the Human Resources Department, the ethics hotline, or her union, before quitting. She also did not request a transfer to a different department before resigning. Had she done so, the store manager would have granted her request. Continuing work was available.

OPINION: The credible evidence establishes that the claimant did not complain to the employer about what she considered to be harassment by her supervisor before quitting. The claimant admits that she took no steps to bring her concerns to the employer's attention before severing the employment relationship after the incident in question. It is significant that she was aware that a coworker had received a transfer after complaining about the supervisor in question; from this, she knew or should have known that a transfer would be available to her as well and the store manager credibly testified that he would have granted such a request had it been made. She further concedes that she did not call her union until after she quit and that she did not remember that she also could have contacted the Human Resources Department about her concerns regarding the supervisor. Under these circumstances, we find that the claimant failed to take reasonable steps to preserve her employment by exhausting all the remedies available to her before quitting. She therefore has not established good cause for ending continuing work. Accordingly, we conclude that her employment ended under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits,

effective May 9, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER